

Memorandum

Date: June 5, 2006

To: Banky Curtis, Chief
Habitat Conservation Division
Department of Fish and Game
1416 Ninth Street
Sacramento, California 95814

From: Department of Water Resources

Subject: South Delta Improvements Program—Request for Incidental Take Authorization and Consistency Determination for Stage 1

The Bureau of Reclamation (Reclamation) and the California Department of Water Resources (DWR) are requesting the initiation of formal Endangered Species Act (ESA) consultation for Stage 1 of the South Delta Improvements Program (SDIP). This letter serves as DWR's request for take authorization (for those species that are only State-listed) and a consistency determination (for those species that are both State and federally listed) to obtain compliance with provisions of the California ESA with regards to the following Stage 1 actions:

- constructing and operating permanent gates across Old River at its divergence from the San Joaquin River, Old River near Tracy, Middle River, and Grant Line Canal; and
- dredging in Middle River, Old River, and West Canal.

Although the modification of agricultural diversions is identified as a Stage 1 action in the SDIP Draft Environmental Impact Statement/Environmental Impact Report, biological opinions for this action have already been issued by U. S. Fish and Wildlife Service (USFWS) and NOAA Fisheries, and a Streambed Alteration Agreement (BD-2002-0002) applicable to this action has been issued by the California Department of Fish and Game (DFG). Therefore, because this action is already permitted, it is not included in this request.

Reclamation and DWR have been involved in an informal consultation process with USFWS, NOAA Fisheries, and the DFG since 2002, which has resulted in the development of the Action Specific Implementation Plan (ASIP). This ASIP (enclosed) will serve as the biological assessment necessary to enter into formal consultation with USFWS and NOAA Fisheries under the federal Endangered Species Act. This ASIP also provides DFG with the information needed to:

- determine whether impacts on the state-listed species would be fully mitigated following implementation of Stage 1 of the SDIP and its related environmental commitments,

- issue incidental take authorization under Section 2081(b) of the California Fish and Game Code for those species that are State-listed but not federally listed, and
- issue a consistency determination under Section 2080.1 of the California Fish and Game Code for those species that are both federally and State-listed, based on the biological opinions that USFWS and NOAA Fisheries will issue through the Section 7 consultations on this ASIP.

The SDIP is a single project that is designed to be carried out in a two-staged decision process. Stage 2 will address the operational component, which would increase the permitted diversion limit at Clifton Court Forebay. Stage 2 will begin only after there is additional information on the cause of the recent decline in Delta pelagic organisms. Prior to making a decision on increasing the permitted diversion limit, DWR and Reclamation will issue and the public will review the necessary supplemental documents for California Environmental Quality Act and National Environmental Policy Act compliance. Formal endangered species consultation regarding the operational component will be undertaken during Stage 2 and is not the subject of this request.

If you have any questions regarding this request, please contact me at (916) 653-1099. I would appreciate being notified as soon as possible if you or your staff needs additional information to make these determinations. Also, your staff may contact Paul Marshall, Acting Chief of the South Delta Branch, at (916) 653-2118 for additional information.

/s/

Katherine F. Kelly

Enclosure

cc: (See attached list.)

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